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2016 NOV -2 P 4: 21

BEFORE THE ARIZONA CORPORATION COMMISSION

COMMISSIONERS

DOUG LITTLE, CHAIRMAN
BOB STUMP
BOB BURNS
TOM FORESE
ANDY TOBIN

IN THE MATTER OF THE APPLICATION OF)
TRICO ELECTRIC COOPERATIVE, INC., AN)
ARIZONA NONPROFIT CORPORATION, FOR)
A DETERMINATION OF THE CURRENT FAIR)
VALUE OF ITS UTILITY PLANT AND)
PROPERTY AND FOR INCREASES IN ITS)
RATES AND CHARGES FOR UTILITY)
SERVICE AND FOR RELATED APPROVALS.)

Docket No. E- 01461A-15-0363

REPLY BRIEF

Trico Electric Cooperative, Inc. ("Trico" or "the Cooperative"), submits its Reply Brief in this matter.

RESPECTFULLY SUBMITTED this 2nd day of November, 2016.

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TRICO ELECTRIC COOPERATIVE, INC.

REPLY BRIEF

NOVEMBER 2, 2016

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1 **I. Introduction.**

2 With the approval of its Member-elected Board, Trico entered into the Settlement
3 Agreement in this case. Approving the settlement is in the public interest and the interest of
4 Trico's members—the ratepayers—because it reflects and acknowledges:

- 5 1. Trico's unique circumstances and challenges arising from rapidly increasing DG
6 deployment and other aspects of the evolving electric service landscape.
- 7 2. Trico's Member-elected Board of Directors' judgment about how to address those
8 challenges, to move toward more equitable rates and to balance the interests of all
9 Trico's Members as a whole.
- 10 3. Trico's standing as a Member-owned distribution cooperative that owns no generation
11 assets and that purchases almost all of its electricity through long-term contracts.

12 Trico's primary goals in this rate case are to implement rates that more equitably recover
13 the fixed costs of service to all Trico Members and to begin to mitigate the current shift of fixed
14 cost recovery from Members with DG to Members without DG. Even under the Settlement
15 Agreement, the permanent cost shift that will be grandfathered is approximately \$40 million over
16 the next 20 years – which translates to \$1,000 per non DG Member. That amount will continue to
17 grow, because the Settlement Agreement is only a first step in mitigating the cost shift. A cost
18 shift of this magnitude is a significant burden for a relatively small rural electric cooperative.
19 Because Trico is owned by its Member-customers, there are no external investors to bear the
20 burden of that cost shift – it falls on other Member-customers. As a Member owned and
21 controlled cooperative, Trico's Board is deeply uncomfortable with one group of Members being
22 so heavily subsidized by all other Members.

23 Trico believes that three-part rates that include a demand element may be part of the
24 solution to more equitable rates given Trico's cost structure as a Member-owned distribution
25 cooperative. Trico's anticipates a gradual approach that may take multiple rate cases. The
26 Settlement Agreement proposes a small but important first step in this gradual process.

1 The Settlement Agreement was signed on July 7, 2016, well before the Commission's
2 decision in the UNS Electric rate case in early August 2016 (Decision No. 75697 (August 18,
3 2016)). Trico carefully followed the proceedings in the UNS Electric rate case. And Trico
4 believes that its situation is significantly different from UNS Electric, such that the UNS Electric
5 Decision does not dictate the outcome of this case based on Trico's unique circumstances and its
6 status as a smaller Member-owned non-profit distribution electric cooperative.

7 Trico also had carefully considered the issues raised in Commission Tobin's October 13,
8 2016 letter in this docket. The letter serves to highlight the cost shift and equitable cost recovery
9 problems and the difficulties of finding a solution. Trico believes that the Settlement Agreement
10 provides an appropriate path forward.

11 First, with respect to three-part rates that include a demand element, the UNS Electric
12 Decision noted that "the time is ripe for a more modern rate design."¹ Trico agrees. The Decision
13 further stated that:

14 "Utilities have traditionally used two-part volumetric rates, consisting of a fixed
15 customer charge, and an energy charge based on kWh sold, to recover the costs of
16 serving residential customers. Until fairly recently, the load characteristics of
17 residential customers were relatively homogeneous, such that the simple two-part
18 rates, designed based on average consumption assumptions, did an adequate job of
19 recovering the costs of service. The short-coming of two-part rates is that if
20 customers use fewer kWhs, for whatever reason, including energy efficiency
products, a desire to protect the environment, or to save money, these rates do not
recover all of the costs of service. The Commission recognized this effect when
energy efficiency and DSM programs were approved by enacting the LFCR, which
was intended to compensate the Company for the lost revenues associated with EE
and DG. . . . Low usage customers do not contribute as much to lost fixed cost
recovery as other customers because their utility bills are smaller."²

21 In discussing three-part rate design options to modernize rates and address the lost fixed
22 cost recovery issues, the Commission stated that "We do not disagree with those who have argued
23 in this case that a three-part rate design can better align revenue recovery with cost causation."³
24 In his letter of October 21, 2016, Chairman Little provided further support for the consideration of
25 alternatives to traditional two-part rates, including demand rates, where circumstances so warrant:

26 ¹ Decision No. 75697 at 65:23.

27 ² Decision No. 75697 at 64:5-16.

³ Decision No. 75697 at 65:3-4.

1 “Regarding the issue of demand charges, in the recent past there have been
2 numerous discussions on the merits of demand charges. Three Part Rates (demand
3 rates) and Time of Use rates have been components of rate design in the electric
4 industry for years. While demand charges were not adopted for UNS in Decision
75697, that decision does not preclude the adoption of demand charges in other
cases...

5 The parties should be free to continue discussions of the merits of demand charges
6 as a rate design option in the Trico rate case. I believe it is reasonable to allow the
7 parties to explore the appropriateness of a zero demand charge, which they did as
part of the Settlement Agreement dated July 8, 2016 and have the opportunity to
argue the case for that Settlement Agreement before the Commission.”

8 In the UNS Electric rate case, the Commission stated that “In order for customers to
9 understand how demand charges work and how they can manage their energy consumption to save
10 money, or at least not incur a bill increase, requires education and tools available to monitor their
11 load.”⁴ Trico agrees that an effective education program, combined with demand monitoring
12 tools, is a requisite precursor before it implements an actual demand charge.

13 Trico also agrees with Commissioner Tobin’s statement that demand charges should not be
14 imposed on customers “unless and until they feel confident in knowing what that rate looks and
15 feels like through shadow billing and how they can adjust their electric consumption in an optimal
16 manner with the latest energy efficiency technology.” Indeed, Trico submits that the Settlement
17 Agreement is designed to help Trico do just that without any adverse impacts on its Members.

18 Trico believes it is important to educate its Members concerning demand rates before any
19 actual demand charge is imposed. Trico also anticipates that any future request for an actual
20 demand charge will require accurate information about Member demand and potential bill
21 impacts. The Settlement Agreement will provide Trico with the ability to do these things.

22 Given Trico’s current billing system, Trico believes the most effective approach is to
23 accurately collect Member demand data and to educate its Members using, in part, a three-part rate
24 with a \$0.00 per kW demand-rate component. All the demand information will be collected and
25 processed in Trico’s billing system – which currently is Trico’s database for such information.
26 The billing system data is then readily available for: (i) demand information that can be used for
27

⁴ Decision No. 75697 at 65:8-11.

1 analysis to determine how potential rate designs will impact each Member; (ii) demand
2 information that can be provided on customer bills; (iii) demand information that can be provided
3 in detail to customers through Trico's SmartHub® application; and (iv) demand information that
4 can be used by customer service representatives, who can quickly and accurately answer Member
5 questions. Trico does not believe it would be prudent to spend significant funds (potentially up to
6 \$1 million) for a parallel system to create so called "shadow bills" to track demand information,
7 nor does it believe that would be an effective tool to educate its Members. Trico believes that the
8 more fiscally responsible and effective solution for its rural Member-owners is to incorporate the
9 \$0 demand charge into the current billing system.

10 Providing actual demand information on the bill would be an important part of the
11 education program, and would ultimately allow the Cooperative to provide comparative
12 information on a Member's bill impact if Trico decides to propose a demand charge in a future
13 rate case – all without confusion of a separate bill. However, Trico needs to begin the education
14 process now.

15 Trico seeks to fully and accurately study Member demand for all its residential and small
16 commercial Members in order to enhance the fairness and effectiveness of any demand charge that
17 it may propose in the future. It is possible that Trico may conclude that an actual demand charge
18 is not in the best interests of its Members as a whole. However, Trico strongly believes that it
19 needs to be in a position to propose an actual demand charge in the future. Accurate billing
20 determinants for accurate potential bill impacts are a critical piece of that next step.

21 Should Trico seek to adopt an actual demand charge in a future rate case, the Cooperative
22 understands that the Commission must approve that charge. Trico also understands that it will
23 bear the burden to prove that (i) any actual demand charge it proposes in the future will be fair and
24 equitable and (ii) its Members have been sufficiently educated over the next few years so that they
25 understand the demand rate and how to manage their demand and that they will not adversely
26 impacted by any such charge. The Settlement Agreement is clear that any actual demand charge
27

1 would need to be approved by this Commission in a subsequent rate case, with a test year ending
2 no sooner than June 30, 2018 (which means a case could probably not be filed until 2019).

3 Under the Settlement Agreement, any transition to three part rates would be gradual. Trico
4 has agreed that any proposal for a demand rate for residential and small commercial Members will
5 not exceed \$2.00 per kW, and will reflect a portion of the distribution-demand fixed-cost
6 component of Trico's cost of service. Thus, any demand charge proposed in a 2019 rate case
7 would be modest. Trico believes that this gradual approach best begins by including the \$0.00
8 demand charge component on member bills so they can get used to the concept and can track their
9 demand and how it changes as the member changes their use. Then, a small demand charge in
10 2019 would begin to send a moderate price signal for the by-then familiar demand component of
11 the bill.

12 With respect to the grandfathering issue, Trico acknowledges that in the UNS Electric rate
13 case decision, the Commission stated that it is the Commission's default policy that a grandfather
14 date should not generally precede the date of a the relevant Commission decision.⁵ Trico is not
15 disputing the Commission's default policy and the Settlement does not challenge that policy. But
16 the Commission also expressly recognized that "each unique rate case may warrant different
17 results" when discussing the grandfather date, leaving the door open to order a different date when
18 supported by the evidence.⁶ In his letter to the docket dated October 21, 2016, Chairman Little
19 indicated that his examination of the Settlement Agreement and the Briefs in this matter indicated
20 that with respect to the grandfathering date, "the parties have included several arguments as to
21 why [the Commission] should consider the alternatives they are putting forward."

22 Trico believes it has set out why the default policy should not apply to Trico's particular
23 circumstances and why the May 31, 2016 grandfather date is appropriate. First, Trico's Members
24 have signed acknowledgments that Trico's net metering tariff may be changed in the future and
25
26

27 ⁵ Decision No. 75697 at 119:13-17.

⁶ Decision No. 75697 at 119:15.

1 that they may be subject to those changes. Examples of those acknowledgments are attached to
2 this brief as **Attachment A**.

3 Despite those express acknowledgment requirements, Trico is still receiving over 40
4 interconnection applications per month (about four times the normal). That means more than 1%
5 of Members per year are installing DG. And Trico already has over 4% DG penetration, which
6 will likely be closer to 5% by the time of the decision in this rate case.

7 Trico also has well-founded concerns based on actual experience that a future
8 grandfathering date will lead to a crush of applications, all of which is on the record in this case.
9 In late February of 2015, SolarCity and other installers were able to submit *100 applications on*
10 *two days' notice* of a future grandfathering date (about a year's worth of applications in two days).
11 Trico is a small rural cooperative with limited staff. A flood of applications could overwhelm
12 Trico, lead to delays in interconnection that are not in the best interest of its Members and lock in
13 an even greater cost shift that is already pushing past \$2 million per year.

14 Trico understands Commissioner Tobin's concerns, but continues to believe that the
15 Settlement Agreement creates a creative and proactive pathway to more equitable rates for all of
16 Trico's Members. In the judgment of Trico's Member-elected Board, the Settlement Agreement is
17 in the best interests of Trico's Members as a whole. Trico requests that the Commission approve
18 the Settlement Agreement.

19 Finally, the opposition set forth by EFCA does not recognize or acknowledge either
20 Trico's status as a distribution cooperative or Trico's cost structure for distribution, transmission
21 and generation. Indeed, EFCA's position attempts to substitute the judgment of an outside
22 consultant for that of Trico's Member-elected Board. That consultant admitted, among other
23 things, that he had no knowledge of the duties of a Cooperative Board, did not review Trico's cost
24 of service studies, did not review Trico's power purchase arrangements and did not present any
25 Trico-specific analysis concerning the impact of the terms of the Settlement Agreement on future
26 DG deployment in Trico's service area.⁷ Effectively, an outside vendor is seeking to keep status
27

⁷ See Tr. (Monsen) at 843, 849, 850, 855-56, 857-58

1 quo so that EFCA's members can continue to profit from larger margins in Trico's high-cost
2 service area than it can achieve right next door in the TEP service area. Indeed, EFCA's own
3 witness acknowledged that a solar company could charge *up to 13.4 cents per kWh under a lease*
4 in Trico's service area and the customer would still break even.⁸ That 13.4 cents per kWh
5 compares to a 9 cents per kWh lease rate that EFCA's witness also testified was typical in other
6 service areas.⁹ The difference between 13.4 cents and 9 cents provides a significant potential
7 profit margin for solar lease companies in Trico's service area.

8 In summary, the Settlement Agreement between Trico and Utilities Division Staff ("Staff")
9 is in the public interest. It reflects a creative and proactive initial step in addressing Trico's unique
10 circumstances and challenges. As Trico has demonstrated in the record, it is substantially different
11 than an investor-owned utility. Trico is seeking just and reasonable rates that reduce the well-
12 documented lost-fixed cost and cost-shift dilemmas clearly in evidence and on the record. The
13 rate design, net metering and grandfathering provisions in the Settlement Agreement are fair to all
14 its Members.

15 Trico's Member-elected Board of Directors has an obligation to look out for *all* of its
16 membership, unlike EFCA, which focuses only on its own interests. While EFCA resorts to
17 histrionics and mischaracterization of the evidence, the testimony and exhibits in the record justify
18 the Settlement as fair, balanced and reasonable. Staff recognizes the fairness inherent in the
19 provisions and also believes the Settlement Agreement to be in the public interest. The Settlement
20 Agreement should be approved.¹⁰

21 **II. Notice in this case was proper.**

22 Even though it has fully participated in this rate case, EFCA argues that the notice of the
23 rate case was inadequate. However, EFCA's arguments are flawed and proper notice was
24

25 ⁸ Ex. EFCA-10 (Monsen Direct) at 16; Tr. (Monsen) at 853-54.

26 ⁹ Ex. EFCA-10 (Monsen Direct) at 15; Tr. (Monsen) at 852.

27 ¹⁰ Trico will not repeat every point it set forth in its Initial Post-Hearing Brief ("Initial Brief") submitted on
October 5, 2016, and relies on its Initial Brief all points not modified or conceded in this Reply Brief.
Trico, however, will respond to the allegations and accusations by EFCA in its Initial Brief, and explain
why its opposition to the Settlement is contrary to the evidence in the record.

1 provided. Trico provided notice in the form and manner required by the Commission. The form
2 of notice fully satisfied the Commission's rules and due process. Moreover, EFCA *never*
3 requested any additional notice even though it has been a party to this docket since January 2016.
4 Finally, to the extent EFCA purports to assert its arguments on behalf of Trico's Members, it is
5 important to note that Trico's Board, which is elected from among the Trico Members, decides
6 when to file a rate case and what to seek in that rate case.

7 **A. Notice was complete, timely, and in accordance with Commission regulations.**

8 Arizona Administrative Code ("A.A.C.") at R14-2-105 governs notice of rate hearings as
9 follows:

10 *R14-2-105. Notice of rate hearings*

11 *A. Every public service corporation shall give notice to customers affected of any hearing*
12 *at which the fair value of that corporation's property is to be determined and just and*
reasonable rates and charges are to be established.

13 *B. The form and manner of such notice shall be as the Commission may direct by*
14 *procedural order.*

15 Trico complied with the December 3, 2015, procedural order in this case and filed the
16 notice as set forth in that procedural order (the "Notice"). The Notice is not, and has never
17 intended to be, indicative of every single incarnation that Staff or any other party may recommend
18 during the course of a rate case proceeding. As Mr. Nitido stated during the evidentiary hearing,
19 the Notice is not updated to reflect every change in proposal.¹¹ Nor does it bind the applicant (in
20 this case, Trico) from modifying its position upon further review or the Commission from
21 amending a proposed order. Applicants have and do modify their positions upon review of Staff
22 and Intervenor recommendations and developments in other cases. There was nothing untoward
23 about Trico modifying its position regarding rate design and demand charges. In any of those
24 instances, the notice need not be updated to reflect those recommendations and modifications to
25 meet due process requirements. Those requirements have been met. What the Commission
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¹¹ Tr. (Nitido) at 132.

1 ultimately orders usually does not reflect what is in the original application.¹² But in none of
2 those instances is there a violation of the notice requirement in the Commission's regulations in
3 this case.

4 Further, the notice in the December 3, 2015 procedural order clearly points out (bolded and
5 underlined) that "**the Commission is not bound by the proposals made by Trico, Staff, or any**
6 **intervenors and, therefore, the final rates approved in this docket may be lower or higher**
7 **than the rates described above.**"¹³ Despite EFCA's attempts to dismiss this language, the fact
8 remains that rates in a rate case has always included a review of all facets of rate design. This
9 includes whether or not to institute new designs or new customer classes as part of any rate case.
10 To put it another way, rate design is inherent in any rate case proceeding. Again, the notice is a
11 procedural tool and not intended to provide every detail of every substantive change. Ms. Terri
12 Ford for Staff noted that significant rate design changes are proposed by Staff and Intervenors, and
13 adopted by the Commission, which may not be reflected in the notice.¹⁴ Trico complied with the
14 procedural order, and no party made any motion to update the notice at any point in this
15 proceeding, *including EFCA*. EFCA also points to no case law that requires the Commission to
16 order subsequent notice every time a party modifies a position.

17 Finally, EFCA *never* requested additional notice in this docket. Not after Trico filed its
18 Amendment to its Application, not after the Settlement was announced in principle, not at the June
19 28, 2016 procedural conference, and not after the Settlement Agreement was docketed.¹⁵ EFCA's
20 delay in raising notice issues is reflective of a pattern of delay by EFCA throughout this docket.

21 **B. The December 3, 2015 procedural order meets procedural due process**
22 **requirements.**

23 EFCA incorrectly implies that Trico committed some violation of procedural due process
24 in this case – and that the December 3, 2015 procedural order is inadequate in this case. As the

25 ¹² Tr. (Nitido) at 127, 130-31; Tr. (Paladino) at 503-04; Tr. (Ford) at 696-97.

26 ¹³ See Ex. EFCA-1 (December 3, 2015 Procedural Order) at 4; Tr. (Nitido) at 129-30.

27 ¹⁴ Ex. S-20 (Ford Settlement Reply Testimony) at 5.

¹⁵ The first general concerns about the notice was contained in Settlement Testimony of Patrick Quinn and even then EFCA did not formally raise the issue.

1 Supreme Court of Arizona stated in *Niedner v. Salt River Project Agricultural Improvement and*
2 *Power District*, “the threshold question in any due process or equal protection claim arising out of
3 the federal constitution is whether the claimed deprivation falls within the perimeter of state
4 action. Private action is immune from the restrictions imposed by the Fourteenth Amendment.”¹⁶
5 Thus, statements in EFCA’s Brief such as “Trico denied all interested parties their due process
6 rights” fundamentally mischaracterize what procedural due process is. Even so, the Commission,
7 through the Administrative Law Judge, has given notice and opportunity to be heard “at a
8 meaningful time and in a meaningful manner”¹⁷ to all persons who desire to challenge Trico’s
9 application and the settlement. In fact, the following information was ordered to be contained
10 within the notice:

- 11 • A summary of the application.
- 12 • How one could seek intervention.
- 13 • How one could obtain more information on the application.
- 14 • Who to contact at Trico.
- 15 • When the hearing would commence.
- 16 • How one could provide comments in the matter.

17 Clearly, the notice is sufficient so that any person can have a meaningful opportunity to be
18 heard and to obtain more information about the case. Also, procedural due process also does not
19 mandate intervention as EFCA implies. Put simply, none of the authorities EFCA cites actually
20 support its position that notice in this case was deficient or that the procedural due process was
21 violated.

26 ¹⁶ 121 Ariz. 331, 332, 590 P.2d 447, 448 (1979) (the Court also stated that the Arizona Constitutional
provisions regarding due process also only applies to state action) (internal quotations omitted).

27 ¹⁷ *Comeau v. Arizona State Bd. Of Dental Examiners*, 196 Ariz. 102, 106-07, 993 P.2d 1066, 1070-71
(App. 1999) (internal quotations omitted).

1 **C. Multiple means were used to provide notification regarding the Settlement**
2 **Agreement.**

3 EFCA ignores the fact that Staff filed a notice of settlement discussions on June 14, 2016,
4 and Staff and Trico made a joint filing on June 22, 2016 indicating that they had reached a
5 settlement in this case. The Settlement was filed July 8, 2016. Trico and Staff filed two rounds of
6 pre-filed testimony explaining why both parties supported the Settlement. EFCA was provided
7 full opportunity to cross-examine both parties' witnesses as to the substantive aspects of the
8 Application Amendment and the Settlement.

9 The Commission has not historically provided publication or mailing of notice of
10 settlement to customers or cooperative members. And this case also does not require such further
11 notice. Moreover, EFCA never requested any additional notice in this case.

12 Moreover, Trico provided notice of the Settlement through a notice provided on the back
13 of bills for the billing cycle that commenced August 2, 2016.¹⁸ New DG Members after February
14 28, 2015 have signed an acknowledgement that Trico was applying to change net metering for
15 those who installed DG after that date. Mr. Nitido discussed the acknowledgement extensively in
16 his Reply Testimony – as well as providing a sample of the form of acknowledgement with his
17 Reply Testimony.¹⁹ Trico also made Members looking into installing DG aware that rates and rate
18 designs may change, through a separate acknowledgement that also was attached to Mr. Nitido's
19 Reply Testimony.²⁰ Both of these acknowledgements are included in **Attachment A** to this Reply
20 Brief.

21 EFCA ignores the fact that Trico is a Member-owned cooperative. The Board of Directors
22 is comprised of Members of Trico who have been elected to be Member-representatives. The
23 Board is responsible to its Members and the Board, in conjunction with Mr. Nitido, to manage
24 Trico's operations for the benefit of all its Members. In fact, EFCA points to no formal allegation
25 that a Member was not aware of the ongoing proceedings and the evolution of those proceedings.

26 _____
27 ¹⁸ See Ex. Trico-8 (Notice of Settlement); Tr. (Cathers) at 740.

¹⁹ See Ex. Trico-5 (Nitido Reply), Exhibit VN-1.

²⁰ See Ex. Trico-5 (Nitido Reply) at 17, Exhibit VN-2.

1 Finally, EFCA speculates that there may have been more intervention had additional notice
2 been provided. However, entities such as AARP appeared and spoke at the public comment
3 session. Thus, they were fully aware of the proceeding. Further, the Commission has routinely
4 granted late intervention when requested.

5 **D. The rate impacts are consistent with the Notice provided in accordance with**
6 **the December 3, 2015 procedural order.**

7 Absent from EFCA's arguments is an acknowledgement that the bill impacts to Members
8 are almost identical to those set forth in the Notice. Rate impacts to the average residential
9 customer, for example, will be 2.63 percent – a slight increase resulting from increased rate case
10 expense due to EFCA's insistence on litigating almost every single aspect of rate design and net
11 metering. EFCA spends a lot of time complaining about no mention of a demand charge in the
12 Notice; but the fact remains that the Settlement establishes a \$0.00 per kW demand-rate
13 component that results in no economic impact to Members – *and there will be no financial impact*
14 *from a demand rate until Trico's next rate case at the earliest.* Further, any increase in the
15 demand rate above zero would require subsequent notice in a separate proceeding with separate
16 opportunity to be heard, if the Settlement is approved.

17 **E. EFCA lacks standing to allege injury to Trico Members due to the Notice.**

18 EFCA, on pages 8-10 of its Brief, insinuates that there would have been more participation
19 by the public but for the Notice. But EFCA is not a consumer advocate and does not represent
20 "the public." EFCA represents a syndicate of mostly out-of-state rooftop solar system lessors and
21 providers. EFCA has no authority to allege injury to Trico Members, or any other person for that
22 matter. Further, to gain standing to bring an action (such as lack of notice or denial of due
23 process) one must allege a distinct and palpable injury; an allegation of generalized harm that is
24 shared alike or by a large class of citizens is not sufficient to confer standing.²¹ EFCA can allege
25 no such injury by any entity, and cannot be the so-called torch bearer for due process claims.

26
27

²¹ See *Sears v. Hull*, 192 Ariz. 65, 69, 961 P.2d 1013, 1017 (1998) (internal quotations omitted).

1 **F. EFCA mischaracterizes the Nevada Court Order that it uses to justify its**
2 **unfounded position.**

3 The First Judicial District Court of Nevada in *Vote Solar v. The Public Utilities*
4 *Commission of Nevada*, 16 OC 0052 (September 12, 2016) appears to deal with an appeal of the
5 Nevada Public Utilities Commission decision in Docket Nos. 15-07041 and 15-07042 regarding
6 applications by Nevada Power Company and Sierra Pacific Power Company (both doing business
7 as NV Energy) to approve cost of service studies and net metering tariffs.²² The bottom line here
8 is that the *Vote Solar* order is *not* addressing a full rate case filing, unlike the matter here.
9 Specifically, Judge James E. Wilson cites to the fact that the applications stated that “[T]his filing
10 does not ...[a]ffect the rights of NEM1 customers in any way.”²³ The problem with the notice in
11 that proceeding was when the PUCN’s Regulatory Operations Staff filed a proposal that included
12 a rate design that *actually did* affect NEM1 customers – completely contrary to the notice.²⁴ The
13 court found that the dispositive issue on notice was whether the Nevada Commission heard and
14 entered orders on Staff’s proposed rate design that affected NEM1 customers – and ruled that the
15 Commission should not have done so.²⁵ Notably, the court upheld the revised rates and charges to
16 NEM2 customers, as being consistent with Nevada law, justified in the record, and not in violation
17 of the Contract Clause in the U.S. Constitution.²⁶

18
19 ²² See Nevada Public Utilities Commission Order in Docket Nos. 15-07041 et. al (December 23, 2015)
20 (“NV Energy Order”) (available at
21 http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2015_THRU_PRESENT/2015-7/8412.pdf and last
22 checked on October 29, 2016)

23 ²³ See *Vote Solar* at 2:10-12, 8:7 (“NV Energy’s applications did not seek NEM1 rate design changes.”)
24 See also e.g. *In re Application of Nevada Power Co. d/b/a NV Energy for approval of a cost of service*
25 *study and net metering tariffs*, Docket No. 15-07041 (July 31, 2015) at 11-12 (available at
26 http://pucweb1.state.nv.us/PDF/AxImages/DOCKETS_2015_THRU_PRESENT/2015-7/4401.pdf and last
27 checked on October 29, 2016) (“Accordingly, the rights and obligations of NEM1 customers remain
unchanged.”) As the NV Energy Order explains – “NEM1” customers are those who have completed
applications that were accepted or approved by NV Energy prior to the cumulative capacity of all NEM
systems reaching the 235 MW cumulative capacity threshold; “NEM2” customers are those who have
completed the applications accepted or approved but after the 235 MW threshold was reach. See NV
Energy Order at FN2.

²⁴ Id. at 3:7-9.

²⁵ Id at 5:22-25.

²⁶ Id. at 12-15.

1 The Nevada cases dealt with applications that NV Energy clearly limited to certain
2 analyses and changes. Trico's application is a full general rate case. The cases are substantially
3 different. All aspects of rates and rate designs are consistently analyzed in a full rate case. In fact,
4 solar industry advocates pleaded for the Commission to review net metering, for example, in a full
5 rate case. To put it mildly, it is ironic that EFCA now seeks to object to what its brethren
6 previously pleaded for the Commission to do, and odd to cite to a case that is plainly different
7 from the matter at hand here.

8 **G. No defense is necessary because the notice at issue was sufficient and proper as**
9 **to both form and substance.**

10 In short, there is simply no requirement that the notice of these proceedings provide the
11 level of detail EFCA claims, and no requirement exists that the notice has to be updated to
12 incorporate every conceivable position parties may take, modifications to those positions, or what
13 the Commission may ultimately decide. Finally, EFCA could have raised the notice issue much
14 earlier than during the evidentiary hearing. It chose instead to wait until the eleventh hour. While
15 EFCA has not expressly waived the notice issue, its behavior adds to the dubiousness of the claim
16 on the merits. Nevertheless, even if EFCA had more properly raised this issue in a timely matter,
17 its position fails on the merits. The Notice as ordered by the Commission through its
18 Administrative Law Judge is proper, meets due process requirements, and does not prevent the
19 Commission from approving the Settlement here.

20 **III. The new DG Energy Export Tariff – and the new export excess energy credit of 7.7**
21 **cents per kWh – can and should be approved with the Settlement Agreement.**

22 EFCA challenges Trico's proposed modifications to its net metering tariff and the
23 proposed DG Energy Export Tariff. EFCA's arguments fail because: (i) the Commission has clear
24 authority to waive its rules when it is in the public interest; (ii) contrary to EFCA's assertions, the
25 DG Energy Export Tariff provides DG Members with compensation for generation and
26 transmission costs; (iii) the DG Energy Export Rate puts Trico Members on a level playing field
27

1 with TEP customers regarding payback periods; and (iv) EFCA failed to provide any Trico-
2 specific analysis of the Settlement Agreement on DG in Trico's service area.

3 **A. The Commission has the authority to waive the net metering rules.**

4 EFCA argues that the Commission has no power to waive the net metering rules. They
5 point to the lack of any specific provision in the rules for a waiver.²⁷ However, the Commission
6 does not require a specific rule to grant a waiver.

7 Historically, to avoid any doubt on the matter, the Commission included a waiver rule or
8 subsection in each of its sets of rules.²⁸ However, beginning with the "slamming and cramming"
9 rules in 2004, Attorney General Goddard began to refuse to certify rules that contained waiver
10 provisions.²⁹ While the Commission removed the waiver language from the rule, it continued to
11 assert authority to grant waivers of the slamming and cramming rules, and the Commission has in
12 fact issued dozens of waivers of these rules.³⁰ For example, the Commission discussed the lack of
13 a waiver provision in connection with a reorganization of Qwest Corp. and determined that a
14 waiver should nevertheless be granted.³¹ The Commission Staff has also taken the position that
15 "case law supports the proposition that the Commission can always waive application of its own
16 rules", even if there is no express rule allowing a waiver.³²

17 Due to the Attorney General's opposition, the Commission for a number of years did not
18 include express waiver provision in new rules. The net metering rules were adopted in this
19 timeframe and thus did not include a waiver rule. But the Commission made it clear that waivers
20 would still be allowed. For example, during the 2008 open meeting on net metering, the

21 ²⁷ EFCA Brief at 16-17.

22 ²⁸ See e.g. A.A.C. R14-2-103(B)(6); R14-2-212(I); R14-2-312(I); R14-2-411(F); R14-2-510(I); R14-2-
23 610(F); R14-2-702(C); R14-2-806; R14-2-909; R14-2-1014; R14-2-1115(I); R14-2-1202(C), (D); R14-2-
1311; R14-2-1614(C).

24 ²⁹ See Decision No. 66967 (May 11, 2004) at Findings of Fact No. 8 and 9 (approving amendments to rules
requested by Attorney General); Letter from Attorney General Terry Godard dated May 20, 2004, attached
to May 26, 2004 letter from Chairman Spitzer in Docket No. RT-0000J-99-0034.

25 ³⁰ See e.g. Decision No. 67460 (Jan. 4, 2005); Decision No. 67827 (May 5, 2005); Decision No. 68347
26 (Dec. 9, 2005); Decision No. 68606 (March 23, 2006); Decision No. 68965 (Sept. 21, 2006); Decision No.
75159 (July 15, 2015); Decision No. 75410 (January 19, 2016).

27 ³¹ Decision No. 70706 (Jan. 20, 2009) at Findings of Fact Nos. 45-49.

³² "Staff's Filing Regarding the Applicants' Request for a Limited Waiver of the Slamming Rules", Docket
No. T-01051B-07-0527, filed June 11, 2008.

1 Commission's Chief Counsel, Christopher Kempley explained, "as you know the Commission
2 retains the authority to waive its rules or to impose in specific instances specific requirements that
3 might be at variance with the rules."³³ He also noted:

4 You retain the ability to waive your rule where appropriate or to approve specific
5 proposals from the utilities that are at variance with your rules, and that can -- you
6 know, that can affect how costs are recovered. Again, I think it's important to think
7 about the rules more as the big picture guidelines that you are setting up rather than
8 trying to think of every individual possibility that might occur. Because you will
9 always have those special cases that are brought to you for waiver ...³⁴

10 The Commission's ability to waive the rules was also made clear during the rules hearing:

11 ALJ WOLFE: Would Staff entertain the possibility of a request for a waiver from
12 the rules if someone found that to be necessary?

13 MR. ABINAH: ...

14 Any company can come to the Commission and ask for a waiver, and at that point
15 we would review the waiver and make our recommendation. That's not precluding
16 TEP or any other company to seek for a waiver, if that's necessary. We look at the
17 waiver and we look at the conditions. So the answer is, yes, if the company
18 believes a waiver is necessary, they can come to the Commission and request for
19 one.³⁵

20 Thus, the Commission has been clear from the onset that it may waive the net metering rules.

21 In addition, the net metering rules provide for a net metering tariff. Tariffs have the force
22 of law and bind the utility and the public at large, not just customers.³⁶ Because both tariffs and
23 rules have the force of law, the Commission has typically treated the tariff as controlling. *See e.g.*
24 A.A.C. R14-2-212(I). The principle that a tariff trumps a rule is presumably based on tariffs
25 typically being more specific and more recent than the corresponding rule. In fact, in this very
26 rate case, the Company is seeking changes to its Rules and Regulations which are in effect,

27 ³³ May 11, 2008 Open Meeting Transcript, Docket RE-00000A-07-0608 at pages 24-25.

³⁴ May 11, 2008 Open Meeting Transcript, Docket RE-00000A-07-0608 at page 32.

³⁵ June 5, 2008 Hearing Transcript, Docket RE-00000A-07-0608 at page 95.

³⁶ *US Airways, Inc. v. Qwest Corp.*, 722 Ariz. Adv. Rep. 12, ¶¶ 11-16, 361 P.3d 942, 945-47 (App. 2015).

1 waivers of the provisions of the Arizona Administrative Code. Moreover, the Recommended
2 Opinion and Order issued in the “Value of Solar” docket expressly states that waivers of the Net
3 Metering Rules would be considered in the utilities’ rate cases.³⁷

4 Finally, the cases EFCA cites do not apply to this situation. This is not a case involving a
5 “retroactive waiver” – where the Commission was found to have given a waiver seven years after
6 the fact.³⁸ Trico is seeking a waiver to the net metering rules, if necessary, in the present. Nor is
7 this a matter involving a decision to reinstate a previously revoked certificate – in an executive
8 session and without a hearing or providing notice to interested parties.³⁹ Neither case holds that
9 the Commission cannot waive its rules when appropriate, in the public interest, and through the
10 proper procedures. Again, the Commission has provided proper procedural safeguards, and the
11 record fully supports the waivers necessary to implement the Settlement and Trico’s new DG
12 Energy Export Tariff.

13 **B. There is substantial evidentiary and factual basis to support the 7.7 cents per**
14 **kWh credit in the DG Energy Export Tariff.**

15 As Trico explained in its Initial Brief, the \$0.0770 per kWh value is equivalent to Trico’s
16 power supply portion of the energy charge for the first tier of the standard residential (RS1) rate
17 schedule. It gives *full credit* for *existing* generation and transmission costs, as derived from
18 Trico’s Cost of Service Studies that no party disputed.⁴⁰ EFCA ignores the record in this case. It
19 is clear EFCA does not like the proposed change to the credit from the retail rate. But that is not

21 ³⁷ See October 7, 2016 Recommended Opinion and Order in Docket No. E-00000J-14-0023, *In the matter*
22 *of the Commission’s Investigation of Value and Cost of Distribution Generation* (“Value of Solar docket”) at 148 (available at <http://images.edocket.azcc.gov/docketpdf/0000173840.pdf> and last checked October 29, 2016)

23 ³⁸ See *George v. Arizona Corp. Comm’n*, 83 Ariz. 387, 392, 322 P.2d 369, 372 (1958) (finding that the
24 Commission’s action to grant a ‘Corrected Certificate’ without hearing, seven years late, was arbitrary, capricious, and a bare usurpation of power it did not and could not possess – and equated it to retroactive regulation.)

25 ³⁹ See *Gibbons v. Arizona Corp. Comm’n*, 95 Ariz. 343, 346, 390 P.2d 582, 584-585 (1964) (“It is apparent
26 from the record that the Order and Decision made by Commission on [October 14, 1963] at the conclusion of an executive session, was made without giving proper and legal notice to petitioners as interested parties.”)

27 ⁴⁰ See Ex. Trico-4 (Nitido Testimony) at 9; Ex. S-19 (Ford Settlement Testimony) at 17; Tr. (Cathers) at 792-93. Trico detailed the strong factual basis for the 7.7-cents value on pages 30-31 of its Initial Brief.

1 the same as arguing the credit lacks evidentiary support. To the contrary, the 7.7-cent per kWh
2 credit in the new DG Energy Export Tariff is well supported in the record. It is also well above
3 Trico's actual avoided costs.

4 **C. Trico provided ample evidence justifying why the 7.7-cent per kWh credit is**
5 **needed now.**

6 Contrary to what EFCA stated in its Brief, the facts are actually as follows:

- 7 • Trico had 551 rooftop DG systems interconnected as of 2014 (which equates to 9
8 years of interconnections from 2005 to 2014); Total interconnected systems
9 increased to 1,262 systems as of February 28, 2015, and to 1,621 systems as of
10 May 31, 2016.⁴¹
- 11 • Trico completed 304 rooftop DG installations in 2014, 458 installations in 2015,
12 and 180 installations through August 25, 2016.⁴²
- 13 • Trico's solar DG *applications* increased from 404 in 2015, to a projected total of
14 approximately 506 in 2016, which is *more than three times* the number of
15 applications in 2013 (160 applications.)⁴³
- 16 • Trico received 99 applications between February 26 and 28, 2015, when the
17 Cooperative filed its application to modify its Net Metering Tariff. In March of
18 2015, SolarCity pulled out of Trico's service territory, and the Cooperative
19 received approximately 15 applications per month, until December of that year,
20 when Solar City reinstated its sales efforts in the service territory. When SolarCity
21 returned, applications again jumped to unprecedented levels.⁴⁴ As a result, Trico
22 still received 404 applications in 2015.

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24
25 ⁴¹ See Trico's Initial Brief at 6.

26 ⁴² Tr. (Cathers) at 803 (EFCA confuses the record by flip-flopping between citing to installations versus
applications).

27 ⁴³ See Trico's Initial Brief at 7.

⁴⁴ See Trico's Initial Brief at 8.

- On the average, Trico's DG Members currently receive a subsidy of \$89.91 per month in fixed grid costs – resulting in a \$35 million subsidy over the life of the current interconnection agreements.⁴⁵
- That subsidy produces a cost-shift to non-DG Members of almost \$2 million per year for the next 20 years. The cost shift continues to escalate at an alarming rate.⁴⁶
- Over four percent of Trico's Members now have DG, significantly larger than for UNS Electric.⁴⁷

This undisputed evidence leads to only one conclusion: the problem for Trico and its membership is real and it is growing. Trico has been attempting to address this issue for over two years. The time is overdue to address the cost shift issue associated with net metering. The evidence is also clear that the problem must be addressed now, in a full rate case, as the solar industry has previously implored for the Commission to do, with all of the facts vetted and verified.

EFCA justifies its “delay” argument by arguing that the Commission should wait until after the “Value of Solar” docket, because it “may be useful in considering how to assign value to DG in rate cases.”⁴⁸ But as a procedural order recently issued in that docket indicates, the matter will not be heard until December.⁴⁹ Even then, there is no certainty that the “Value of Solar” docket will be resolved at that time or how long it would take to conduct any subsequent phase of this docket.

Perhaps more importantly, the Recommended Opinion and Order in the “Value of Solar” docket issued October 7, 2016, acknowledges that cooperatives like Trico “should be afforded

⁴⁵ Ex. Trico-4 (Nitido Testimony) at 3; Ex. Trico-5 (Nitido Reply) at 8-10.

⁴⁶ Ex. Trico-5 (Nitido Reply) at 7.

⁴⁷ Tr. (Nitido) at 96.

⁴⁸ See EFCA Brief at 18.

⁴⁹ The Value of Solar matter had been scheduled to be heard on November 29, 2016. See October 12, 2016 Procedural Order in Value of Solar docket (available at <http://images.edocket.azcc.gov/docketpdf/0000173889.pdf> and last checked October 29, 2016). But this matter is now scheduled to be heard on December 13, 2016 (see Correspondence from Chairman Doug Little dated October 26, 2016, available at <http://images.edocket.azcc.gov/docketpdf/0000174212.pdf> and last checked October 29, 2016).

1 flexibility to develop rate design solutions to the cost shift caused by DG and should not be
2 required to comply with any one-size-fits-all requirements that would impose economic and
3 operational hardships.”⁵⁰ Trico believes that the Settlement Agreement and the associated DG
4 Energy Export Tariff set at 7.7 cents per kWh is consistent with this provision of the Value of
5 Solar ROO. Moreover, the 7.7 cents per kWh export rate under the Settlement Agreement is
6 higher than what the export rate would be under either the recommended methods set forth in the
7 ROO (either the “Staff Avoided Cost Methodology with Five-Year Forecasting” or the “Staff
8 Resource Comparison Proxy Methodology with a Five-Year Rolling Average”). With respect to
9 the Avoided Cost Methodology, Trico has *already* included *all* its actual test year fixed and
10 variable cost of generation and transmission (including transmission losses), in the 7.7 cents per
11 kWh. As Trico has testified, it would not avoid any significant future generation or transmission
12 costs because a reduction in system peak demand does not reduce its fixed generation and
13 transmission costs. With regard to the Resource Comparison Proxy Methodology, Trico like most
14 of the other distribution cooperatives did not historically enter into any utility scale solar PPAs
15 because of the costs of those PPAs and the economic hardship upon the Cooperative. However
16 due to a lower priced market, Trico included in its 2016 REST plan a program to investigate utility
17 scale solar. Trico has now completed a request of proposals process and the solar PPAs under
18 consideration are all within the 3 to 4 cents per kWh range, all well below the 7.7 cents per kWh.
19 Trico expects to execute one or more solar PPAs by the beginning of 2017.

20 Understanding the Commission has not made the final decision, there is an
21 acknowledgment that cooperatives are different and must be afforded leeway to address the DG
22 cost shift.⁵¹ The Settlement also acknowledged the ongoing “Value of Solar” proceedings,
23 allowing for this docket to remain open for 18 months to accommodate the findings in that docket.
24 This is hardly lip service as EFCA implies, and EFCA assumes that Staff will abdicate its

25 ⁵⁰ See October 7, 2016 Recommended Opinion and Order in Value of Solar docket at 172 (available at
26 <http://images.edocket.azcc.gov/docketpdf/0000173840.pdf> and last checked October 29, 2016)

27 ⁵¹ It is ironic that counsel for EFCA here argued on behalf of the The Alliance for Solar Choice or “TASC”
that any methodologies determined in the “Value of Solar” docket not be binding or even be established for
use in other proceedings, as the Recommended Opinion and Order notes on page 140.

1 responsibility to make an appropriate request upon final resolution of the “Value of Solar” docket
2 if the circumstances so warrant.

3 In short, approving the Settlement does not “shortchange” the “Value of Solar” docket, it
4 provides a clear compensation for exported excess energy from DG systems (with onsite use still
5 offset at the retail rate). While EFCA argues that DG customers “get confusion, have uncertainty,
6 and will likely be short-changed”, it provides no evidence supporting such assertions. As EFCA
7 does not represent any Trico Members or group of Members, it is not in a position to make such
8 claims.

9 As for EFCA’s suggestion of a “second phase”, the Arizona Supreme Court in *George*
10 acknowledged – “[t]here must at some time be an end to litigation.”⁵² Delaying resolution and not
11 approving the Settlement in favor of a “Phase II” harms a smaller non-profit distribution-only
12 rural Member-owned electric cooperative – for the benefit of EFCA’s out-of-state large solar
13 lessor industry membership. It is not appropriate to re-litigate the same issues yet again imposing
14 additional hardship on the rural members of Trico.

15 **D. Trico has shown that it under-recovers from DG Members.**

16 EFCA argues that Trico has not proven that Trico under-recovers fixed costs from its
17 Members or that there is a cost shift to non-DG members. However, EFCA, once again, ignores
18 the evidence that Trico presented (and EFCA has not presented any evidence to the contrary). For
19 example, Mr. Nitido testified that half of the lost-fixed costs due to DG, the distribution costs, are
20 not recovered.⁵³ This is in addition to all of the calculations and data admitted into evidence and
21 highlighted in Trico’s Initial Brief.⁵⁴ Further, EFCA also ignores how Mr. Nitido detailed the
22 subsidy shifted to non-DG members from DG Members:

23 A. Okay. And then with respect to the volumetric energy rate, what happens is that
24 when a DG solar member generates his own electricity and exports it to Trico at
25 the retail energy rate, they’re utilizing the system to offset kWh that otherwise
would have been collected through a volumetric energy rate. And the fixed
costs of building, maintaining, financing the grid are not recovered because

26 ⁵² 83 Ariz. at 390, 322 P.2d at 371.

27 ⁵³ Tr. (Nitido) at 101-02; see also Ex. Trico-1 (Application) – Direct Testimony of Karen Cathers at 16.

⁵⁴ Specifically, Trico’s Initial Brief at pages 9-10.

1 they're built into the volumetric energy rate. And to the extent those are not
2 recovered or they're shifted to other members, that's a subsidy.⁵⁵

3 Mr. Hedrick also indicated that there is more to the analysis than just average usage for a
4 DG customer.

5 Q. So independent of which block they fall in, you don't know the number of solar
6 customers that cover their cost of service?

7 A. No. I don't have – I don't know the specific number of customers that are – that
8 are below that level of kilowatt-hour consumption, you know, that we're talking
9 about here. And again, there are other issues with regard to DG customers
10 besides just the average consumption in terms of covering their cost. So it's a
11 more complicated question than simply looking at the average usage for a DG
12 customer.⁵⁶

13 EFCA's citations to the transcript are incomplete, and paint a misleading picture. Average
14 usage alone is not the dispositive factor in determining under-recovery. By contrast, Trico
15 presented evidence through multiple witnesses, studies and analysis that Staff corroborated, that
16 establishes existence of subsidies to DG Members by non-DG Members, a cost-shift, and lost-
17 fixed costs.⁵⁷ Consequently, these facts justify a change in the net metering tariff applicable to
18 new DG Members.

19 DG Members receive the benefits of net metering. This is a significant benefit to DG
20 Members, with a retail rate credit not supported in any study applicable to Trico's service territory.
21 Naturally, the impacts of changing net metering would impact only DG Members. But many other
22 provisions in the Settlement designed to address lost-fixed costs apply to *all* Members. This
23 includes rate design changes. It is disingenuous for EFCA to suggest that Trico is singling out DG
24 Members as the source of all problems, as it does in its Brief.⁵⁸

25 **E. Trico did include the benefits of DG in its analysis.**

26 EFCA incorrectly asserts that the DG Energy Export Rate does not factor in any benefits
27 provided by rooftop DG. The evidentiary record clearly shows that the DG Energy Export Rate
28 provides compensation to DG customers significantly above the actual benefits that the exported

29 ⁵⁵ Tr. (Nitido) at 164-65.

30 ⁵⁶ Tr. (Hedrick) at 374.

31 ⁵⁷ See Trico Initial Brief at 6-10.

32 ⁵⁸ Specifically, at page 23:4-5.

1 DG energy provides. Mr. Hedrick testified that, given Trico's circumstances and generation
2 resources, only the fuel and variable component of the wholesale power cost is avoided as a result
3 of DG exported energy.⁵⁹ Indeed, the majority of Trico's wholesale power costs are fixed.⁶⁰
4 Other potential benefits asserted by EFCA are neither identifiable nor quantifiable.⁶¹ Indeed, the
5 Recommended Opinion and Order in the Value of Solar docket points out that attempting to
6 evaluate benefits over a longer-term horizon could incorporate "inherently speculative data based
7 on factors that could be easily manipulated."⁶² Also, that "quantifying the societal and economic
8 development benefits of DG in an avoided cost forecast . . . is a speculative endeavor that has no
9 place in ratemaking."⁶³ And EFCA did not provide any Trico-specific information to justify
10 crediting such speculative benefits.

11 Notwithstanding, the Settlement Agreement provides for an export excess energy credit
12 that includes "the fixed and variable components of the generation and the fixed transmission cost
13 associated with the first 800 kWh-block tier of the energy rate in [Trico's] proposal."⁶⁴ The 7.7-
14 cents per kWh credit also would fully offset future generation and transmission investment, as Ms.
15 Cathers stated during the evidentiary hearing.⁶⁵ In fact, Trico agreed to a credit higher than what
16 its avoided cost analysis supports. Trico's COSS and analysis justifies a credit of \$0.030795 per
17 kWh. In short, Trico's analysis is justified in the record, and does consider appropriate benefits of
18 DG.

19 EFCA seeks a completely-different paradigm to evaluate the so-called benefits of DG,
20 from what is utilized in Arizona to establish just and reasonable rates. However, it provided no
21 evidence specifically-applicable to Trico. EFCA ignores that rates and charges are based on a
22 historical test-year in Arizona, and that this is a proceeding to establish rates for Trico. It is not a

23 ⁵⁹ Tr. (Hedrick) at 376.

24 ⁶⁰ Tr. (Hedrick) at 375.

25 ⁶¹ Tr. (Hedrick) at 375-76

26 ⁶² See October 7, 2016 Recommended Opinion and Order in Value of Solar docket at 148.

27 ⁶³ See October 7, 2016 Recommended Opinion and Order in Value of Solar docket at 150.

⁶⁴ Tr. (Nitido) at 180. See also Tr. (Nitido) at 176 (indicating that Trico used other methods besides COSS to assess the value of solar).

⁶⁵ Tr. (Cathers) at 793-94 (except that it does not offset future generation associated with load growth, which could result in higher or lower costs)

1 resource planning exercise; even so, future benefits have been considered and even incorporated in
2 the Settlement. The 7.7-cents per kWh credit includes all the variable and fixed cost of Trico
3 generation and transmission, including transmission losses. Further, since Trico is not seeking to
4 create separate customer classes for DG, there is no need for a “specific DG COSS.”⁶⁶ Thus,
5 EFCA’s claims that benefits were not analyzed and considered lack merit.⁶⁷

6 **F. EFCA’s benefit-cost analysis is fundamentally flawed.**

7 Essentially, EFCA admits to simply utilizing a recent DG valuation study by another solar
8 advocacy group (TASC) regarding a different vertically-integrated, investor-owned utility to
9 justify its assertion that the export excess energy delivered to a member-owned rural electric
10 distribution cooperative should continue to be credited at the retail rate. In other words, EFCA
11 believes that the analysis should be the same for a 39,000-member-owned rural distribution
12 electric cooperative, as for a 90,000-plus vertically integrated investor-owned utility with a
13 significantly different service territory. Notwithstanding the flaws in TASC’s analysis in and of
14 itself, it strains credibility to state, as EFCA witness Mr. William Monsen does, that the same
15 analysis can simply be applied without reflecting upon the very substantial differences in
16 utilities.⁶⁸ The reality is that EFCA did no benefit-cost analysis; it merely took the one done for a
17 different utility and assumed the results would be the same. As it turns out, Mr. Monsen has
18 almost no knowledge of Trico’s specific operations or of cooperatives in general.⁶⁹

19 As the evidence in this case shows, Trico is a substantially different utility than UNS
20 Electric. For example, in addition to the obvious differences cited to above, Trico’s transmission
21 service agreements are primarily network service agreements, the billing of which is based on
22 Trico’s load ratio share of each system’s total cost at time that each system peaks. By contrast,
23 UNS Electric has a single system peak occurring at the same time for the entire system; so it is

24
25 ⁶⁶ Tr. (Hedrick) at 387.

26 ⁶⁷ And as demonstrated, Trico considered avoided generation and transmission capacity costs in addition to
avoided energy costs, contrary to EFCA’s assertion in its Brief at page 24:19-23.

27 ⁶⁸ See Ex EFCA-10 (Monsen Direct Testimony) at 31 (“I believe if that were I to conduct a comparable
analysis, I would reach a similar conclusion.”)

⁶⁹ Tr. (Monsen) at 841-44.

1 more difficult to quantify or even determine how Trico impacts the system of others. It is
2 therefore very difficult to design an effective retail rate signal based on multiple transmission load
3 ratio share charges.⁷⁰

4 EFCA witness Monsen does not appear to take any of these differences between Trico and
5 UNS Electric into account. It is striking that he simply assumes that there will be “not much of a
6 different conclusion” when determining the value of solar between UNS Electric and Trico. At a
7 minimum, one cannot simply assume a similar conclusion for both, as Mr. Monsen has done here.
8 The evidence presented by Trico, in contrast, is specific to Trico and analyzes the value of DG to
9 Trico’s system. Trico’s evidence is the only credible evidence in this case regarding the value of
10 DG, pure and simple. Trico’s evidence justifies the Settlement and the 7.7-cent per kWh credit as
11 reasonable and appropriate to use for new DG Members.

12 **G. The record confirms that DG still makes economic sense for Members under**
13 **the Settlement Agreement.**

14 EFCA makes the unfounded assertion – without any Trico-specific information – that DG
15 is no longer economical in Trico’s service area under the Settlement Agreement. However, Trico
16 has explained in detail in its Initial Brief that the Settlement Agreement places Trico’s Members
17 on a level playing field with Tucson Electric Power Company’s (“TEP”) customers under full
18 retail net metering. The average overall base rate credit to Trico DG Members resulting from the
19 Settlement of \$0.091417 per kWh will be higher than TEP’s full net metering credit of \$0.091311
20 per kWh. No party disputed this fact. This is also higher than the typical lease rate of \$0.09 per
21 kWh cited by EFCA’s own witness.⁷¹

22 It may be that EFCA’s members may no longer be able to extract large profits by
23 providing DG in Trico’s higher cost service area -- indeed, EFCA admits that a solar lease could
24 charge \$0.134 per kWh in Trico’s service area (well above the typical lease rate) and still have
25 Trico Members “break-even”.⁷² But EFCA provided no specific evidence about how its members

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27 ⁷⁰ See Ex. Trico-5 (Nitido Reply) at 6.

⁷¹ Ex. EFCA-10 (Monsen Direct) at 16; Tr. (Monsen) at 853-54.

⁷² Ex. EFCA-10 (Monsen Direct) at 15; Tr. (Monsen) at 852.

1 may be effected – indeed, EFCA’s witness did not and could not explain what impact EFCA’s
2 members would experience under the Settlement Agreement.⁷³

3 Moreover, Staff witness Yue Liu provided expert analysis that concluded the Settlement
4 does not make DG investments uneconomical. As explained during the evidentiary hearing, Mr.
5 Liu also verified his analysis by reviewing additional information that supported the
6 reasonableness of some assumptions he made.⁷⁴ Further, Mr. Liu relied on a system life of 33
7 years as reflected in the NREL DG Renewable Energy Estimate of Costs – updated in February
8 2016 – which he cited to in his testimony.⁷⁵ Mr. Liu further relied on actual installed costs versus
9 what the solar installer actually charges, including solar contractor profits.⁷⁶ But perhaps most
10 importantly, Mr. Liu testified that he was not involved in the Settlement; his model has no
11 obligation to support the Settlement; but that the results show that the impact does not make solar
12 uneconomic.⁷⁷ Fundamentally, the establishment of just and reasonable rates is not to assure a
13 certain return on investment in DG to Members or profits for EFCA membership. Even so, the
14 change in payback to DG Members for investment in DG is only two-to-three years from the
15 current net metering tariff and retail rate credit to the DG Energy Export Tariff – based on the
16 Staff analysis with reasonable assumptions amply supported in the record. Thus, the unbiased
17 evidence from Staff in this case supports the conclusion that the Settlement will not render DG
18 uneconomic in Trico’s service territory.

19 **IV. A \$0.00 per kW demand-rate component is fair, reasonable and appropriate and in**
20 **the public interest as part of the Settlement Agreement.**

21 Despite EFCA’s efforts to obfuscate, the facts and evidence are that the demand-rate
22 component will work in concert as an important part of a comprehensive education program to
23

24 ⁷³ See Tr. (Monsen) at 845-46 (no idea how SolarCity sets its lease rate), 855-56 (did not calculate impact
of settlement agreement).

25 ⁷⁴ For example, Ex. S-14 (U.S. Homeowner’s on Clean Energy: A National Survey) and S-15 (SolarCity
June 2016 Investor Presentation); Tr. (Liu) at 618-20.

26 ⁷⁵ See Ex. S-13 (Liu Settlement Testimony) at 5 (citing the NREL estimate available at
http://www.nrel.gov/analysis/tech_lcoe_re_cost_est.html and last checked on October 29, 2016).

27 ⁷⁶ See Tr. (Liu) at 645-47; Ex. EFCA-8 (Trico’s Response to EFCA’s Data Request 7.21).

⁷⁷ Tr. (Liu) at 656-57.

1 inform Members about demand charges, while they incur no economic impact. The demand-rate
2 component with actual demand information on Member bills, however, will provide Trico the
3 opportunity to collect and analyze Member data, and allow Trico to assess the impact of any future
4 proposals – while *also* providing *actual* information to Members with their monthly demand data,
5 including maximum demand readings for the month and date and time it occurred.⁷⁸ This is, to
6 put it simply, a superior way to inform and educate Members with zero impact to them.⁷⁹ This
7 information will be gathered over multiple years; Members will be provided this demand
8 information over many billing cycles before any further implementation of demand rates could
9 occur. This includes Members having access to demand interval data through Trico's SmartHub®
10 application.

11 Further, the tariff, which allows for the demand-rate component to be put on Member bills
12 (as required by A.A.C. R14-2-210(D)(1)) further informs and educates Members about the
13 demand rate.⁸⁰ Trico is perplexed that EFCA is opposed to allowing it a means to provide *more*
14 information to its Members and to provide as robust an education program while also being able to
15 collect information in order to assess the potential for demand rates as thoroughly as possible.⁸¹
16 Moreover, EFCA fails to acknowledge that any demand charge in Trico's next rate case would be
17 capped at \$2.00 per kW – and would have to be fully vetted in that rate case and approved by the
18 Commission.

19 As Mr. Nitido explained during the evidentiary hearing, Trico is seeking to ascertain how
20 to best allocate the costs of using its facilities by all its Members, and that demand charges are a
21 fair way to allocate those costs:

22 A. Well it doesn't – no, I mean, you're making an assumption that what we're
23 doing is somehow contrary to our members' best interest, and I guess I would
24 assert exactly the opposite. We're doing – we're considering demand rates as a

25 ⁷⁸ Ex. Trico-5 (Nitido Reply) at 19-20; Ex. Trico-7 (Hedrick Reply) at 4; Tr. (Nitido) at 214-15. See also
Utilities Division Staff's Initial Brief at 13.

26 ⁷⁹ Tr. (Nitido) at 204-05 (stating that the demand-rate component educates the Members in conjunction
with the education and outreach.)

27 ⁸⁰ Tr. (Nitido) at 196-97; Tr. (Cathers) at 759; Tr. (Paladino) at 501, 524-25.

⁸¹ Ex. Trico-5 (Nitido Reply) at 20-21.

1 way to more fairly allocate the cost of the grid that everyone uses. We think
2 that's a fair way to do it. We're going to find out through our studies.⁸²

3 As stated in its Initial Brief, Trico believes demand rates can better match the actual fixed
4 costs incurred by a Member to the fixed cost recovery, but understands thorough Member
5 education and study is necessary. This is the time to begin the process, and the Settlement
6 provides the most proactive, creative and effective means to achieve that goal.⁸³

7 Further, the demand-rate component allows Trico to gather information from all Members,
8 so it can best evaluate what the impacts are to implementing demand rates. This provides Trico
9 with the necessary data to determine if certain groups or outliers could be especially impacted, and
10 to formulate potential design changes to mitigate any issues. Trico explained the foundation of its
11 demand-rate component in testimony: a 24/7 non-coincident peak (NCP) demand and the
12 maximum demand reading for any 15-minute interval in the monthly billing period, based on the
13 particulars of Trico's system and designed to reduce stress on the distribution system in local areas
14 and maintain higher load factors.⁸⁴ So the basis for the demand-rate component and measuring
15 demand for purposes of informing Members is justified by the evidence in the record.

16 EFCA also ignores two other key provisions in the Settlement. First, Trico must use a test-
17 year ending June 30, 2018 for its next rate case. This means that, given the typical procedures for
18 a rate case, new rates would not be in effect until at least January 1, 2020. With regard to A.A.C.
19 R14-2-107 – allowing for an alternative rate application process for electric cooperatives – Trico
20 notes that A.A.C. R14-2-107(T) allows for the Commission to determine “at any stage in the
21 processing of a cooperative's rate application under this section . . . that the rate application shall
22 instead proceed under [the standard rate case procedures at] R14-2-103.” Second, any demand
23 charge in the next rate case cannot exceed \$2.00 per kW under the Settlement. And even before
24 such a rate can be implemented, Trico must go through a subsequent full rate case, including all
25 the procedural safeguards regarding notice and opportunity to be heard.

26 ⁸² Tr. (Nitido) at 203.

27 ⁸³ Trico's Initial Brief contains a thorough discussion of the merits of the demand-rate component at pages
21-29.

⁸⁴ Tr. (Cathers) at 741-42.

1 **A. Demand charges are neither inherently volatile nor inherently punitive.**

2 Contrary to EFCA's assertions, a \$0.00 per kW demand rate is hardly volatile or punitive.
3 It is also hard to fathom how the Settlement terms regarding demand rates impose a "volatile and
4 punitive" scheme to harm Members. Trico, as a Member-owned cooperative, has a special duty to
5 ensure that its Members are not punished by the charges it implements, but it also has an
6 obligation to explore the best means to recover its costs.

7 EFCA focuses a lot of attention on its "3,000 interval argument" – alleging that Members
8 would have to "contemplate their energy usage" over 3,000 interval periods in a month. That is an
9 absurd mischaracterization of how residential customers respond to demand rates. A well-
10 designed demand rate should provide incentive to customers to minimize their peak demand at any
11 point in time. That does not require concentrated focus on thousands of separate intervals, rather it
12 incentivizes an overall behavioral modification resulting in reduced demand and correspondingly,
13 a reduction in system capacity requirements. Staggering the use of major energy-consuming
14 devices, for example, is an easy but effective step to reduce demand.⁸⁵ As Mr. Hedrick testified,
15 Trico has had demand rates for its larger commercial and industrial customers with great success –
16 using the same measurement of demand.⁸⁶ These customers have been able to navigate their usage
17 without the need for interval data for over two decades, contrary to EFCA's arguments here. A
18 comprehensive education program, as required under the Settlement, will set forth further means
19 to cheaply and effectively reduce peak demand, while also pointing out technologies that can also
20 assist in the effort.⁸⁷ Trico will enlist the assistance of third-party expertise and base its program
21 on other successful education programs, as it should do.⁸⁸ Even EFCA's witness Pat Quinn admits

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26 ⁸⁵ Ex. Trico-7 (Hedrick Reply) at 5; Tr. (Hedrick) at 397.

27 ⁸⁶ See Ex. Trico-6 (Hedrick Testimony) at 6, 8; Ex. Trico-7 (Hedrick Reply) at 4.

⁸⁷ Ex. Trico-5 (Nitido Reply) at 23; Tr. (Nitido) at 235.

⁸⁸ Tr. (Nitido) at 213-16.

1 that he is on a demand charge, despite his assertion that they are confusing.⁸⁹ Further, Trico will
2 provide interval data to those that request it (through its SmartHub® application).⁹⁰

3 **B. Trico has the technological capability to implement the \$0.00 per kW demand-**
4 **rate component.**

5 EFCA incorrectly asserts that Trico is not capable of measuring demand. The evidence is
6 that 97% of Trico's 46,086 active meters are currently capable of measuring and recording
7 demand, with some now currently recording demand.⁹¹ In approximately six months, at a cost of
8 about \$600,000, Trico will replace the 1,350 meters not capable of recording demand, and make
9 the necessary modifications to its billing software.⁹² Trico is capable of capturing the required
10 NCP demand data for all its Members.

11 **C. The demand-rate component and tariff are instrumental as part of the overall**
12 **plan to educate Members about demand charges.**

13 EFCA's accusation that "Trico is banking on the fact that the \$0.00 demand charge will be
14 so confusing to its customers . . ." is misguided and unfounded. Ms. Cathers explains that the
15 tariff, among other things, provides an additional tool to educate Members.

16 A. Well, the idea was to actually put this demand data into our billing software, have it on
17 the bill, and then as people – as we educate people and talk to them, to have a tariff that
18 we would point to. Typically, a customer looks at their bill, questions things. And the
19 next place they go is our website. Our website has each one of our tariffs listed there.
20 They would go to their residential tariff and they would look to try and understand
21 what is on their bill. And we wanted some kind of explanation as to what this is and
22 what it would do, and hopefully incite additional questions that would be followed up
23 through our educational programs.⁹³

24 As Trico stated in its Initial Brief, the demand-rate component essentially will illustrate to
25 Members what their respective demands would be; providing the tariff that describes how the
26 demand rate will work is in concert with the education program Trico will develop.⁹⁴ The

24 ⁸⁹ Tr. (Quinn) at 922 (Trico notes that Mr. Quinn is testifying on behalf of a trade association and not for a
25 consumer advocacy group in this case; further, that most of Mr. Quinn's utility experience is as a telephone
company executive and not as a consumer advocate. See Tr. (Quinn) at 934, 936).

26 ⁹⁰ Ex. Trico-5 (Nitido Reply) at 23; Tr. (Nitido) at 265; Tr. (Cathers) at 461.

27 ⁹¹ Ex. Trico-5 (Nitido Reply) at 22;

⁹² Tr. (Nitido) at 192-93.

⁹³ Tr. (Cathers) at 759.

⁹⁴ Tr. (Nitido) at 201; Tr. (Hedrick) at 404.

1 provisions on demand in the Settlement work together to provide clarity to Members and allows
2 for education with actual data – while there is no economic impact to the Members. The idea is to
3 provide *as much information as possible* to Members about demand charges. EFCA’s ridiculous
4 allegation accusing Trico of intending to confuse its Members lacks any shred of merit.

5 By contrast, EFCA continues to state that customers will simply be too confused to
6 understand demand charges. Mr. Quinn, testifying for EFCA, admits that he is essentially selling
7 Members short, that they will never be able to figure out demand charges.⁹⁵ But the Settlement
8 Agreement is designed to clear up any confusion by getting demand information on Member bills,
9 through establishing a tariff that describes the demand-rate component, and complementing those
10 efforts with an extensive Member education program.⁹⁶ While EFCA sells Trico Members short,
11 Trico’s Member-elected board of Trico Members believes the demand-rate component is the best
12 way to educate its Members.

13 **D. Under the Settlement Agreement, any further implementation of demand**
14 **rates must be done in a subsequent general rate case.**

15 Trico believes demand rates could provide for a more equitable rate design, and that
16 demand charges are the more accurate and fair means to allocate fixed costs of building,
17 maintaining, and financing the electric grid.⁹⁷ Further implementation of demand charges under
18 the Settlement can only occur in Trico’s next general rate case, as clearly stated in the Settlement
19 and as stated many different times by both Staff and Trico. There is no guarantee that further
20 implementation will ever occur, even if Trico proposes it. That is subject to the review of Staff
21 and the approval of the Commission, at a minimum. EFCA misrepresents Ms. Cathers’s
22 testimony on page 37 of its Brief. Ms. Cathers is only addressing approval of the Settlement;
23 Trico does not expect that demand rates will automatically be further implemented. And as Ms.
24 Cathers stated later on “That doesn’t mean that the plan can’t change because your data in your
25 analysis tells you it is not going to work. And our board would not implement something that was

26 ⁹⁵ Tr. (Quinn) at 941.

27 ⁹⁶ Tr. (Nitido) at 196-97.

⁹⁷ Ex. Trico-5 (Nitido Reply) at 21; Tr. (Hedrick) at 328-29.

1 going to hurt our membership.”⁹⁸ In short, Trico seeks to obtain the necessary data to determine
2 whether and how to implement demand charges, but understands that it has a responsibility to
3 educate Members and put forth a case for doing so. The Settlement allows it to gather such
4 information and educate Members about demand. Implementing the provisions in the Settlement
5 regarding demand are thus in the public interest, and the unfounded positions of a trade
6 association with a pecuniary interest and bias should not detract the Commission from doing so.

7 **V. The Grandfathering cutoff date of May 31, 2016 in the Settlement Agreement – is**
8 **justified by the facts and circumstances in evidence in this case.**

9 Trico understands that the Commission has set forth a default policy to not have the
10 grandfathering date precede the date of a Commission decision, as stated on page 119 of Decision
11 No. 75697 regarding UNS Electric’s recent 2015 general rate case. Even so, the specific facts and
12 circumstances in this case, on the record through testimony and exhibits support the cutoff date of
13 May 31, 2016 – which will allow over 1,600 DG Members to remain on the current net metering
14 tariff and receive a full retail rate credit for exported excess energy onto Trico’s grid.

15 All Members who file applications for DG interconnections are provided with and required
16 to acknowledge receipt of notice of the current rate proceeding before their application is
17 completed. Mr. Nitido provided a sample of the forms of acknowledgement in his Reply
18 Testimony (attached to this Reply Brief as part of **Attachment A**).⁹⁹ This acknowledgement notes
19 the existence of this rate case, and that Trico proposed an excess energy credit at avoided cost – or
20 \$0.03662 per kWh. The acknowledgement includes a requirement for a Member signature,
21 indicating that the Member is aware of the rate case (among other things). All new DG Members
22 that could be subject to the new DG Energy Export Tariff therefore knew of the possibility that the
23 excess energy credit could change. Trico also made Members looking into installing DG aware
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25
26

27 ⁹⁸ Tr. (Cathers) at 762.

⁹⁹ The Exhibit VM-1 was admitted as part of Ex. Trico-5 (Nitido Reply).

1 that rates and rate designs may change, through a separate acknowledgement that was attached to
2 Mr. Nitido's Reply Testimony and is also attached to this Reply Brief as part of **Attachment A**.¹⁰⁰

3 Further, Trico extensively detailed the reasons for a grandfathering cutoff date before the
4 date that a Commission decision in this case becomes effective. That detail includes the
5 significant expansion of DG in Trico's service territory to over 4% of Trico Members, the fact that
6 DG Members avoiding paying, on average, almost \$90 a month in fixed costs of service, and a
7 cost shift to non-DG Members approaching \$2 million per year (or almost \$40 million over 20
8 years).¹⁰¹ This is a significant burden for a smaller non-profit member-owned cooperative like
9 Trico, and especially for its non-DG Members.

10 Also, and as detailed in its Initial Brief, Trico provided additional evidence to support the
11 grandfathering cutoff date in the Settlement Agreement:

- 12 • Avoiding another flood of applications for DG interconnection that exacerbates the
13 lost-fixed cost recover and cost-shift problems Trico is facing;
- 14 • Balancing that need with a grandfathering cutoff date that is 15 months after the
15 original proposed cutoff date that allows an additional 359 DG Members to remain on
16 the current net metering tariff;
- 17 • Noting that Trico is facing a significantly higher level of DG interconnection
18 applications than UNS Electric and that of Sulphur Springs Valley Electric Cooperative
19 ("SSVEC"), and the problem is escalating.
- 20 • Indicating that Trico has no investors to bear the impact of the lost-fixed cost recovery
21 associated with DG, as those costs must be shifted to non-DG Members that in Trico
22 case are rural and many of whom are low income.¹⁰²
- 23 • Trico's higher cost service area is a target for rooftop solar DG contractors because
24 they can make more profit from the higher retail rates.

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26 ¹⁰⁰ See Ex. Trico-5 (Nitido Reply) at 17; Exhibit VM-2 (also admitted as part of Mr. Nitido's Reply
Testimony).

27 ¹⁰¹ Ex. Trico-5 (Nitido Reply) at 15; Tr. (Nitido) at 96-97; Ex. Trico-6 (Hedrick Testimony) at 13.

¹⁰² See pages 34-37 an Initial Brief

1 Further, Trico is neither seeking, nor is there any evidence to support, a separate rate
2 design for DG Members – ironically, the opposite of what solar industry trade groups advocate.
3 Finally, there is no retroactive ratemaking because the new DG Energy Export Tariff under the
4 Settlement would only apply to new DG Members and *only after* the effective date of the
5 Commission decision approving the Settlement.

6 **VI. The monthly customer charges set forth in the Settlement Agreement are just and**
7 **reasonable and supported by the cost of service study in this case.**

8 The Cost of Service Study (“COSS”) that Trico conducted, Staff supported, and that no
9 other party contested, indicates that the customer component of expense associated with the
10 distribution wires for the Residential class is \$31.83 per month.¹⁰³ The COSS more than supports
11 a residential monthly charge of \$24.00 – which is offset by lowering the energy rate and providing
12 a two-tier inverted block with decreased rates from what Trico originally proposed.¹⁰⁴ The
13 monthly customer charge is in line with monthly customer charges for other electric cooperatives
14 serving rural areas and consistent with the \$25 per month charge that the Commission just
15 approved in the SSVEC rate case.¹⁰⁵

16 Nevertheless, EFCA also argues that the monthly charge increase is not in keeping with the
17 principles of gradualism and amounts to rate shock. But the so-called “massive and immediate”
18 increase to its customer charge, paired with a zero-dollar demand charge, and decreased
19 volumetric rates results in an approximate \$2.05 increase for a residential Member using an
20 average of 837 kWh, and an approximate \$2.45 increase for a residential Member using a median
21 amount of 750 kWh. As Mr. Nitido stated, this amounts to an increase of less than 0.25 percent

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23 ¹⁰³ Ex. Trico-6 (Hedrick Testimony) at 4; Ex. Trico-7 (Hedrick Reply) at 8-9.

24 ¹⁰⁴ Ex. Trico-5 (Nitido Reply) at 8. See also the Recommended Opinion and Order for the recently-
25 concluded rate case for Sulphur Springs Valley Electric Cooperative issued October 12, 2016, in Docket
26 No. E-01575A-15-0312, at 16-17 (approving an increase of the monthly customer charge to \$25.00 over
27 four years – citing to the significant under-recovery of fixed costs, the lack of a fixed-cost recovery
mechanism and no demand rate). The recommended order is available at
<http://images.edocket.azcc.gov/docketpdf/0000173894.pdf> and last checked October 29, 2016. The
Commission approved the recommended order on October 27, 2016 during its last Open Meeting.

¹⁰⁵ Ex. Trico-6 (Hedrick Testimony) at 5-6; Tr. (Nitido) at 287-88.

1 per year over the past seven years, since the last Trico rate decision in 2009.¹⁰⁶ EFCA ignores
2 these facts in its argument. One does not analyze gradualism by cherry-picking which charges to
3 focus on. Further, just and reasonable rates require that the utility (Trico) receive a reasonable
4 opportunity to earn its rate of return. There is simply no legal argument EFCA can raise that the
5 resulting rates in this case fail to comport with that standard.

6 **VII. The current residential TOU rate does not reflect Trico's cost of acquiring**
7 **generation.**

8 In pressing for a continuation of residential Time-of-Use ("TOU") rates, EFCA again
9 chooses to ignore the undisputed facts in the record. As explained in its Initial Brief, Trico's long-
10 term wholesale power contracts are based on a single monthly rate that does not differ by time of
11 day or day of the week and fixed capacity charges that do not change with usage – meaning that
12 Trico receives no corresponding reduction in power costs when Members on the RS2TOU tariff
13 reduce peak usage.¹⁰⁷ Trico also explained how the current TOU tariff could work against the
14 incentive to reduce demand and smooth out customer load – causing customers to stack usage
15 resulting in a peak that merely shifts, but does not smooth out, demand.¹⁰⁸ Nevertheless, the
16 Settlement only freezes the current TOU rate schedule; it does not eliminate it. Residential
17 Members currently on the TOU rate will be able to remain on it through Trico's next rate case
18 (which again, must use a test year ending no earlier than June 30, 2018).

19 EFCA notes that Trico is not seeking to eliminate its pumping time of day rate. This is
20 true, simply because the impact of those Members being on is slight compared to the impact of
21 residential TOU Members (about 6 million kWh for the 30 Members on the pumping TOU tariff
22 versus 36 million kWh for 2,500 residential Members).¹⁰⁹ Further, those 30 Members have been
23 on that rate for decades. Thus, given the minimal impacts of the pumping time of day rate, Trico is
24 not seeking to freeze it in this case.

25 ¹⁰⁶ Ex. Trico-4 (Nitido Testimony) at 7.

26 ¹⁰⁷ Ex. Trico-5 (Nitido Reply) at 24; Tr. (Cathers) at 754.

27 ¹⁰⁸ Ex. Trico-5 (Nitido Reply) at 24-25.

¹⁰⁹ Tr. (Hedrick) at 451-52.

1 **VIII. Conclusion.**

2 Trico requests that the Commission approve the Settlement as it is in the public interest,
3 and because the provisions are supported by the evidence in the record as being fair and equitable,
4 and result in rates that are just and reasonable.

5
6 RESPECTFULLY SUBMITTED this 2nd day of November, 2016.

7
8 SNELL & WILMER, L.L.P.

9 By 

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Attorneys for Trico Electric Cooperative, Inc.

Attachment A

Exhibit VN – 1



A Touchstone Energy® Cooperative



February 22, 2016

RE: TRICO SUNWATTS PV PROGRAM INTERCONNECTION APPLICATION

Dear Trico Member:

Trico Electric Cooperative, Inc. (Trico) has received your Photovoltaic (PV) Interconnection Application. Before we conduct a review of your Application and provide you with the authorization to begin the installation of your proposed PV system, we want you to be aware of a couple of items that will likely impact the savings calculation promised to you by your solar installer with the installation of your PV system.

There is currently a generic proceeding, being led by the Arizona Corporation Commission (ACC), to determine the value and cost of solar. The final outcome of this proceeding may have an impact on what Trico will pay you for the energy generated by your PV system. Other proceedings are also taking place in which different proposals are being made by various parties including the ACC Staff.

Additionally, on October 23, 2015, Trico filed a rate case with the ACC. In this filing, Trico requested to modify its current net metering tariff. If approved by the ACC, Trico's new net metering tariff will mean that any power not immediately consumed by your household will be paid to you at the avoided cost rate of \$0.03662 per kilowatt hour, on each monthly bill. You will no longer be allowed to roll any excess energy over within the month or to the next month's bill to use when your system is unable to produce enough energy to meet your needs, such as at night or on a cloudy day.

Trico strongly suggests that you incorporate the current ACC generic proceeding and Trico's proposed new net metering rate structure into your decision-making process and savings/costs calculations.

If Trico's proposal is approved by the ACC, the average Trico solar member with a PV system installed after February 28, 2015, will pay approximately **\$42** per month more on their monthly bill than under the existing net metering tariff. We do not know what additional impact the generic ACC proceeding may have on your bill at this time.

Neither Trico's proposed net metering tariff nor the February 28, 2015, implementation date has been approved by the ACC at this time. In the Trico rate case, the ACC Utilities Division Staff and/or intervenors may propose different modifications to the net metering

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Trico Electric is an equal opportunity provider and employer.

tariff which may affect your bill in other ways. The ACC is not bound by any party's proposal, and may accept, reject, or modify any proposed rate, charge or term of service.

It is Trico's hope that your solar contractor has communicated the possible impacts to you, pending a decision by the ACC to the generic proceeding on the value and cost of solar and Trico's rate case. However, we have found that many of our Members have not been adequately advised of what is happening with this issue.

In addition, the Arizona legislature has passed Arizona Revised Statute (A.R.S.) § 44-1763, effective January 1, 2016, in an effort to ensure that you are advised of what you are agreeing to when you decide to install a PV system. Members buying, financing or leasing a solar distributed energy generation system (System) must receive certain disclosures from the manufacturer and solar installers regarding warranties, payment obligations, performance data and major System components as set forth in A.R.S. § 44-1763.

As part of the installer's interconnection application process for the purchase or lease of a System, members must acknowledge on the form enclosed that they have had the opportunity to review their contract documentation to ensure that it contains all the required information set forth in the attached A.R.S. § 44-1763.

If after reviewing the enclosed information you still wish to move forward with the installation of your PV system, please sign below and return the signed acknowledgement to Trico. Upon receipt, Trico will proceed with its review of your PV Interconnection Application. Trico will reject interconnection applications which do not include a signed copy of this acknowledgement.

Due to a large increase in the number of Applications at the end of 2015 and beginning of 2016, Trico's application review and interconnection of new PV systems will be delayed. Trico is reviewing Applications on a first-come, first-served basis and will contact you or your solar installer once your Application has been reviewed. Please DO NOT install your PV system until you receive written confirmation that your Application has been reviewed and approved by Trico for installation.

Thank you for your interest in Trico's renewable energy programs. If you have any questions, please contact Trico's Sunwatts Desk, at (520) 744-2944, ext. 1524 or via email at sunwatts@trico.coop.

**MEMBER ACKNOWLEDGEMENT
FINANCING, SALE OR LEASE AGREEMENTS FOR DISTRIBUTED GENERATION
ADHERENCE TO A.R.S. § 44-1763**

I, Member:

- Have read and understand that there is a generic proceeding to evaluate the value and cost of solar and that Trico has proposed modifications to its net metering tariff through its rate case proceeding that may have a significant impact on distributed generation (including rooftop solar) savings.
- Have read the attached A.R.S. § 44-1763 requirements.
- Have been given the opportunity to review the contract documentation for the purchase or lease of my System to ensure that it contains all the required information set forth on the attached A.R.S. § 44-1763.

Member Signature

Date

Member Printed Name

Address, City, State, Zip

Trico Account #

Phone Number

Email Address

Note: Trico will reject interconnection applications which do not include a signed copy of this acknowledgement.

Arizona Revised Statute (A.R.S.) § 44-1763

44-1763. Distributed energy generation system agreements; disclosures; exception

- A. An agreement governing the financing, sale or lease of a distributed energy generation system to any person or a political subdivision of this state must:
1. Be signed by the person buying, financing or leasing the distributed energy generation system and must be dated. Any agreement that contains blank spaces affecting the timing, value or obligations of the agreement in a material manner when signed by the buyer or lessee is voidable at the option of the buyer or lessee until the distributed energy generation system is installed.
 2. Be in at least ten-point type.
 3. Include a provision granting the buyer or lessee the right to rescind the financing, sale or lease agreement for a period of not less than three business days after the agreement is signed by the buyer or lessee and before the distributed energy generation system is installed.
 4. Provide a description, including the make and model of the distributed energy generation system's major components or a guarantee concerning energy production output that the distributed energy generation system being sold or leased will provide over the life of the agreement.
 5. Separately set forth the following items, if applicable:
 - a. The total purchase price or total cost to the buyer or lessee under the agreement for the distributed energy generation system over the life of the agreement.
 - b. Any interest, installation fees, document preparation fees, service fees or other costs to be paid by the buyer or lessee of the distributed energy generation system.
 - c. If the distributed energy generation system is being financed or leased, the total number of payments, the payment frequency, the amount of the payment expressed in dollars and the payment due date.
 6. Provide a disclosure in the sale and financing agreements, to the extent they are used by the seller or marketer in determining the purchase price of the agreement, identify all current tax incentives and rebates or other state or federal incentives for which the buyer may be eligible and any conditions or requirements pursuant to the agreement to obtain these tax incentives, rebates or other incentives.

7. Identify the tax obligations that the buyer or lessee may be required to pay as a result of buying, financing or leasing the distributed energy generation system, including:
 - a. The assessed value and the property tax assessments associated with the distributed energy generation system calculated in the year the agreement is signed.
 - b. Transaction privilege taxes that may be assessed against the person buying or leasing the distributed energy generation system.
 - c. Any obligation of the buyer or lessee to transfer tax credits or tax incentives of the distributed energy generation system to any other person.
8. Disclose whether the warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred to a third party.
9. Include a disclosure, the receipt of which shall be separately acknowledged by the buyer or lessee, if a transfer of the sale, lease or financing agreement contains any restrictions pursuant to the agreement on the lessee's or buyer's ability to modify or transfer ownership of a distributed energy generation system, including whether any modification or transfer is subject to review or approval by a third party. If the modification or transfer of the distributed energy generation system is subject to review or approval by a third party, the agreement must identify the name, address and telephone number of, and provide for updating any change in, the entity responsible for approving the modification or transfer.
10. Include a disclosure, the receipt of which shall be separately acknowledged by the buyer or lessee, if a modification or transfer of ownership of the real property to which the distributed energy generation system is or will be affixed contains any restrictions pursuant to the agreement on the lessee's or buyer's ability to modify or transfer ownership of the real property to which the distributed energy generation system is installed or affixed, including whether any modification or transfer is subject to review or approval by a third party. If the modification or transfer of the real property to which the distributed energy generation system is affixed or installed is subject to review or approval by a third party, the agreement must identify the name, address and telephone number, and provide for updating any change in, the entity responsible for approving the modification or transfer.
11. Provide a full and accurate summary of the total costs under the agreement for maintaining and operating the distributed energy generation system over the life of the distributed energy generation system, including financing, maintenance and construction costs related to the distributed energy generation system.
12. If the agreement contains an estimate of the buyer's or lessee's future utility charges based on projected utility rates after the installation of a distributed energy generation system, provide an estimate of the buyer's or lessee's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five

percent annual decrease to at least a five percent annual increase from current utility costs. The comparative estimates must be calculated based on the same utility rates.

13. Include a disclosure, the receipt of which shall be separately acknowledged by the buyer or lessee, that states:

- a. Utility rates and utility rate structures are subject to change. These changes cannot be accurately predicted. Projected savings from your distributed energy generation system are therefore subject to change. Tax incentives are subject to change or termination by executive, legislative or regulatory action.
- b. Before the maintenance or warranty obligation of a distributed energy generation system under an existing lease, financing or purchase agreement is transferred, the person who is currently obligated to maintain or warrant the distributed energy generation system must disclose the name, address and telephone number of the person who will be assuming the maintenance or warranty of the distributed energy generation system.
- c. If the seller's or marketer's marketing materials contain an estimate of the buyer's or lessee's future utility charges based on projected utility rates after the installation of a distributed energy generation system, the marketing materials must contain an estimate of the buyer's or lessee's estimated utility charges during the same period as impacted by potential utility rate changes ranging from at least a five percent annual decrease to at least a five percent annual increase from current utility costs.
- d. This section does not apply to an individual or company, acting through its officers, employees or agents, that markets, sells, solicits, negotiates or enters into an agreement for the sale, financing or lease of a distributed energy generation system as part of a transaction involving the sale or transfer of the real property to which the distributed energy generation system is or will be affixed.

Exhibit VN – 2

Attachment A

DISCLAIMER

POSSIBLE FUTURE RULES and/or RATE CHANGES AFFECTING YOUR PHOTOVOLTAIC (PV) SYSTEM

The following is a supplement to the On-Grid PV Interconnection Enrollment Form with Trico Electric Cooperative, Inc. (Trico).

1. Your PV system is subject to the current rates, rules and regulations established by the Arizona Corporation Commission (Commission). The Commission may alter its rules and regulations and/or change rates in the future. If this occurs, your PV system is subject to those changes and you will be responsible for paying any future increases to electricity rates, charges or service fees from Trico.
2. Trico's electricity rates, charges and service fees are determined by the Commission and are subject to change based upon the decision of the Commission. These future adjustments may positively or negatively impact any potential savings or the value of your PV system.
3. Any future electricity rate projections which may be presented to you are not produced, analyzed or approved by Trico or the Commission. They are based on projections formulated by external third parties not affiliated with Trico or the Commission.
4. Trico proposed a new net metering tariff in the rate case it filed with the Arizona Corporation Commission (Commission) on October 23, 2015 in Docket No. E-01461A-15-0363. Trico requested that the proposed new Net Metering Tariff apply to Interconnection Applications received after February 28, 2015. Neither the proposed tariff nor the February 28, 2015 implementation date has been approved by the Commission at this time. In Trico's rate case, the Commission's Utilities Division Staff and/or intervenors may propose different modifications to the Net Metering Tariff which may affect your bill in other ways. The Commission is not bound by any party's proposal, and may accept, reject, or modify any proposed rate, charge or term of service. For further information, please visit Trico's website at www.trico.coop.

By signing below, you acknowledge that you have read and understand the above disclaimer. Please return to Trico.

(Member's Printed Name)

(Member's Signature)

(Member's Service Address)

City _____ State _____ Zip Code _____

(Date)